

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**Case No. 02-CR-199**

**-vs-**

**THOMAS P. VITRANO,**

**Defendant.**

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**ORDER**

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This case is before the Court on remand from the Seventh Circuit Court of Appeals with directions to re-sentence the defendant, Thomas Vitrano (“Vitrano”) as an armed career criminal. At the original sentencing this Court found that Vitrano had three prior Wisconsin convictions that qualified as violent felonies for purposes of the armed career criminal provision of the Sentencing Guidelines. However, this Court also found that one of the convictions was excepted under § 18 U.S.C. 921(a)(20) and therefore it did not sentence Vitrano as an armed career criminal. The Seventh Circuit Court of Appeals has now directed the Court to do so.

Vitrano objects to the direction of the Seventh Circuit Court of Appeals and asks this Court to dismiss the sentence and retry the issue of whether the armed career status applies offering argument under the recent *Booker* and *Shepard* decisions. This the Court cannot do in as much as the direction of the Seventh Circuit is clear. There are no factual issues to be tried. The Seventh Circuit Court of Appeals has held as a matter of

law that Vitrano qualifies as an armed career offender and must be re-sentenced accordingly.

**THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED** that Vitrano's requests for dismissal or re-trial are dismissed. The Court shall conduct a re-sentencing hearing on **November 4, 2005 at 9:00 A.M.**

Dated at Milwaukee, Wisconsin, this 26th day August, 2005.

**SO ORDERED,**

**s/ Rudolph T. Randa**  
**HON. RUDOLPH T. RANDA**  
**Chief Judge**